

**Cheshire East Council**

**Northern Planning Committee**

**Date of meeting: 14<sup>th</sup> March 2018**

**Report of Emma Hood, Arboricultural Officer, Environmental Planning**

**Title: Cheshire East Borough Council (Pickmere – The Elms, Park Lane) Tree Preservation Order 2017**

**PURPOSE OF THE REPORT:**

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 13th November 2017 at land at The Elms, Park Lane at Pickmere; to consider representations made to the Council with regard to the contents of the TPO and to determine whether to confirm or not to confirm the Order.

**SUMMARY RECOMMENDATION:**

The Head of Planning (Regeneration) recommend that the Northern Area Planning Committee confirm the Tree Preservation Order at land at The Elms, Pickmere with no modifications.

**WARD AFFECTED**

High Legh

**POLICIES**

Cheshire East Local Plan – SE5 - Trees, hedgerows and woodland

**FINANCIAL IMPLICATIONS**

None

## **LEGAL IMPLICATIONS**

The validity of a TPO may be challenged in the High Court on the grounds that the TPO is not within the powers of the Act or that the requirements of the Act or Regulations have not been complied with in respect of the TPO. When a TPO is in place, the Council's consent is necessary for felling and other works, unless the works fall within certain exemptions e.g. to remove a risk of serious harm. It is an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy any tree to which the Order relates except with the written consent of the authority.

## **RISK MANAGEMENT**

The loss of trees could have a significant impact upon the amenity and landscape character of the area. The confirmation of this Tree Preservation Order will ensure that the Council maintains adequate control over trees of amenity value.

## **CIRCUMSTANCES**

The circumstances are that planning application 17/4264M has been submitted seeking planning permission for the demolition of a former public house and redevelopment of the site for residential purposes (4 dwellings), including landscaping and associated works. The site comprises of .15 hectares and includes the former public house and a large hard surfaced parking area which abuts the road frontage of Park Lane. A linear group of trees are located along the eastern boundary of the rectangular shaped plot and adjacent to the parking area. The site is bounded by an access road to the east and other residential properties to the south and west with views over open countryside to the north.

One Oak tree located adjacent to the south east boundary of the site and located on land owned by The Oaks, and one other oak within the site boundary were removed in late June/early July of 2017 prior to the submission of the planning application. The manner in which the works were undertaken generated some public interest including requests for the remaining trees on the site to be considered for formal protection. The supporting Arboricultural Report by Mulberry Tree Management Consultants identified trees within the site and categorised them in terms of their condition and contribution to the amenity of the area. The Report submitted with the application was carried out on 27<sup>th</sup> March 2017 prior to the removal of the trees and no reference was made to the presence of the mature oak trees in the report.

The proposed development layout had also been found to present an indirect threat to one mature Sycamore (T1) identified to be retained on Proposed Site Plan in respect of social proximity to the plots and associated post development concerns. The tree represents the only moderate quality remaining tree on the site, and as part of the remaining treescape contributes to the surrounding area, and was considered of sufficient amenity value and a long term feature to justify a Tree Preservation Order being made.

Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 13th November 2017.

## **CONSULTATIONS**

On making the TPO a planning authority must publish and serve copies on owners and occupiers of land directly affected by it. There is a 28 day period to object or make representations in respect of the Order. If no objections are made the planning authority may confirm the Order itself if they are satisfied that it is expedient in the interests of amenity to do so. Where objects or representations have been made, then the planning authority must take them into consideration before deciding whether to confirm the Order.

The Order was served on the owner/occupiers of the land and their Agents on 13<sup>th</sup> November 2017. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order, Pickmere Parish Council and Ward Members.

## **VIEWS OF THE PARISH/TOWN COUNCIL**

Comments were received from the Parish Clerk supporting the service of the Order

## **OBJECTIONS/REPRESENTATIONS**

The Council has received one objection to the Tree Preservation Order from Thistlewood Properties (Pickmere) Ltd. A letter outlines a formal objection to the Order for the following reasons:

- *In February 2017 we approached Cheshire East planning authority for pre-application advice in respect of our proposal to redevelop the above site for residential purposes. In the written response received, we were advised that the tree in question was not subject to a TPO and there was no reference to a desire to protect the tree.*
- *Through the submission of our subsequent planning application (reference number 17/4264M) it was made clear that this tree was to be retained and incorporated within the landscaping plan. There is no threat to the loss of the tree and therefore the TPO is not necessary.*
- *We fail to see how this tree can be considered to bring significant amenity value to the area given the number of existing trees in the area or that its removal would have significant negative impact on the local environment. We do not believe protecting the tree will bring a reasonable degree of public benefit in the presence or future as required by the Department for Community and Local Government. In our opinion the Order has been made to frustrate the current planning application referred to above.*

- *Given that the site is at present a derelict public house that has a significant negative impact on the surrounding amenity, that there is no immediate threat to the tree given the sites current use nor a threat from the proposed development as the tree will be retained, we request that the TPO application is reconsidered.*

## **APPRAISAL AND CONSIDERATION OF THE OBJECTION**

### Objection by Thistlewood Properties (Pickmere) Ltd.

The response to the pre application enquiry which was sent to Charlotte Fowler dated 22<sup>nd</sup> February 2017 confirmed that none of the trees associated with the eastern and western boundary were formally protected. However notwithstanding this, the trees were identified as a material consideration and constraint to the site requiring the submission of an Arboricultural Impact Assessment to consider the impacts of established tree cover within influencing distance of the proposal.

The decision to afford long term protection of the trees on the site was one made further to consideration of information submitted with application 17/4264M, namely the proposed layout and the impact of this on the only remaining moderate quality tree identified to be retained. While the tree was shown to be retained on the layout plan, the Principal Arboricultural Officer had expressed concerns as to the social proximity of the tree identified for protection in relation to plots 1 and 2. With regard to the matter of expediency and the suggestion that there is '*no threat*' to the tree; the change of use of land in close proximity to development can present a situation where trees can come under threat, or at risk from requests to prune or even remove in the longer term where daylight or seasonal nuisance becomes a factor. Advice from Government is that; '*it may be expedient to make a TPO if the authority believes that there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be imminent*'. *The Law of Trees, Forests and Hedgerows Second Edition s22.2.8 p573 by Charles Mynors* further clarifies Government advice stating that ; '*it is also perfectly appropriate to impose an order where a development proposal, if implemented, might lead to future pressures from the occupiers of the finished buildings to remove trees*'.

Taking in to account the circumstances which had already lead to the removal of three other trees on and adjacent to this application site prior to submission of the application, there was a justifiable and understandable perception within the local community that there was a risk of the remaining amenity being destroyed, therefore the expediency of making a TPO could be demonstrated.

The assessment as to whether the Sycamore was appropriate for a TPO found that the tree was a moderate quality tree concurring with the comments and 'B' quality category rating within the tree survey schedule of the supporting AIS. While it has been subjected to past pruning and is ivy clad, it is not deemed to contain any serious defects that will compromise its longer term retention. The tree has been found to have amenity value in an area which does not benefit from high percentage tree coverage, the value of which has undoubtedly increased further to the recent tree removals in the same area. It is the Council's view that it is not unreasonable for moderate 'B' category trees to be afforded protection where it can be demonstrated that their physiological condition is such that their life expectancy will exceed 20 years and that they provide a proven contribution to the amenity of the area.

A TPO is not a barrier to development and will not prevent development from taking place, the Order has not frustrated the planning process and has served only to ensure the protection of one tree around which the nature of the existing landscape is proposed to change. Further to discussions between the Councils Principal Forestry and Arboricultural Officer and the Arboricultural Consultant acting on behalf of Thistlewood Properties, an amicable solution to the retention of this tree within the development layout was found and the planning application was granted consent on 20<sup>th</sup> February 2018.

The Council is of the view that its assessment of the tree fully accords with Government advice contained in Planning Practice Guidance *Tree Preservation Orders and Trees in Conservation Areas* and the making of this Order is therefore deemed to be expedient as it affords long term protection of a tree with amenity value which contributes to the landscape character of an area.

## **RECOMMENDATION**

That the Cheshire East Borough Council (Pickmere – The Elms, Park Lane) Tree Preservation Order 2017 is confirmed without modification.